



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 26 2002

REPLY TO THE ATTENTION OF:

William B. Moran
Administrative Law Judge
U.S. EPA (1900L)
Ariel Rios Building
1200 Pennsylvania Avenue
Washington, D.C. 20460

Re: DaimlerChrysler Corporation - Docket No. RCRA-05-2001-0015

Dear Judge Moran:

Pursuant to the Prehearing Order dated December 12, 2001, and the Order Denying Extension of Time dated February 8, 2002, please find enclosed Complainant's Initial Prehearing Exchange in the above-referenced matter. I may be contacted by telephone at (312) 353-5751, or by fax at (312) 886-0747.

Respectfully submitted,

Karen L. Peaceman

Karen L. Peaceman
Associate Regional Counsel

Enclosure

cc: Steven C. Kohl, counsel for DaimlerChrysler Corporation
Duncan Campbell, DE-9J
Regional Hearing Clerk, 19J

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

02 FEB 26 P4:18

In The Matter Of)
)
DaimlerChrysler Corporation,) Docket No. RCRA-05-2001-0015
)
) Administrative Law Judge William B. Moran
Respondent)

COMPLAINANT'S INITIAL PREHEARING EXCHANGE

Complainant submits the following information as an initial prehearing exchange pursuant to the Prehearing Order in the above-referenced matter.

1. INITIAL LIST OF WITNESSES/COPIES OF DOCUMENTS AND EXHIBITS

Witnesses

Complainant may call the following witnesses¹:

1. Duncan Campbell
Environmental Protection Specialist
Enforcement and Compliance Assistance Branch
U.S. EPA - Region 5 (DE-9J)
77 W. Jackson Blvd.
Chicago, IL 60604

Mr. Campbell would testify to the enforcement action against Respondent, information received regarding Respondent's facility, and his observations and opinions regarding the April 5, 2001 Compliance Evaluation Inspection (CEI) of Respondent's Toledo, Ohio facility. He would give evidence of the violations by Respondent, the regulations at issue, and the

¹At the hearing, the EPA witnesses may be qualified as experts in specified areas of knowledge and expertise. The order in which the witnesses are listed is not necessarily the order in which their testimony would be presented at hearing, and the witnesses' testimony will not be limited by or to the summaries provided herein.

appropriateness of the penalty amount proposed by EPA.

Mr. Campbell would testify as to facts and provide his opinions regarding the regulations at issue, information received regarding compliance with the regulations at issue at Respondent's facility, the case against Respondent for the violations alleged in the complaint, and the compliance actions sought in the Complaint which U.S. EPA should order at the affected portions of the facility.

Mr. Campbell will testify to the statutory penalty factors, including the seriousness of the violations and any good faith efforts to comply with the applicable requirements, the potential harm the violations posed to the environment and their effect on the regulatory program and the calculation of the proposed penalty.

Mr. Campbell would testify that Respondent should be ordered to come into compliance with the requirements of RCRA and Ohio's hazardous waste regulations, to undertake marking of equipment, leak detection monitoring and compliance recordkeeping for equipment that contains or contacts hazardous waste with organic concentrations of at least 10 percent by weight (in order to correct the violations alleged in Counts 3, 4, and 5 of the Complaint), and to make specified submittals and certification to EPA to ensure that it is achieving compliance within specified timeframes. Based on post-complaint information Respondent may submit to EPA, the Agency may submit a revised proposed Amended Compliance Order prior to or at the time of the hearing.

2. David Eberly
Permits Branch (5303W)
Office of Solid Waste
U.S. EPA
Washington, D.C. 20460

Mr. Eberly would testify as to facts and provide his opinions regarding EPA's determination that certain equipment at Respondent's facility associated with its spent solvent storage tank was and is subject to the leak detection and repair (LDAR) requirements found at 40 CFR 265.1050 et seq., known as Subpart BB, Standards for Equipment Leaks.

3. Michael Mikulka

Mr. Mikulka would testify as to facts and provide his opinions regarding EPA's determination that certain equipment at Respondent's facility associated with its spent solvent storage tank was and is subject to the leak detection and repair (LDAR) requirements found at 40 CFR 265.1050 et seq., known as Subpart BB, Standards for Equipment Leaks.

4. Gary Deutschman
Ohio EPA
Northwest District Office
347 North Dumbridge Rd.
Bowling Green, OH 43402

Mr. Deutschman would testify to OEPA's RCRA program and the CEI of Respondent's facility on April 5, 2001, his inspection of the facility, his observations of the conditions at the facility, his opinions regarding Respondent's compliance with Ohio law and regulations and the necessary steps Respondent must take to come into compliance with Ohio's RCRA program.

5. Mr. Joseph Boyle, Chief
RCRA Enforcement and Compliance Assistance Branch
Waste, Pesticides and Toxics Division
U.S. EPA, Region 5 (DE-9J)
77 West Jackson Blvd.
Chicago, IL 60604

Mr. Boyle would testify about the importance of the regulatory requirements violated by Respondent in this case.

6. W. Charles Moeser
Sr. Manager, Industrial Waste Compliance & Environmental Communications
Stationary Environmental & Energy
DaimlerChrysler Corporation
800 Chrysler Drive CIMS 482-00-51
Auburn Hills, MI 48326-2757

Unless called as a witness by Respondent, Mr. Moeser may be called as a witness by U.S. EPA; if called as a witness by Respondent, Mr. Moeser will be cross-examined by the Agency attorneys. In either situation, Mr. Moeser will be examined regarding the operations at DaimlerChrysler's Toledo, Ohio facility, the violations at issue in the Complaint, and such other matters as Complainant deems relevant (as allowed by the Court). Given Mr. Moeser's position with the Respondent corporation, Complainant requests the right to treat this witness as an adverse or hostile witness and to examine him through the use of leading questions should it become necessary for Complainant to call Mr. Moeser as a witness in U.S. EPA's case-in-chief.

7. Sue Forest, P Eng
St. Environmental Compliance
Stationary Environmental & Energy
DaimlerChrysler Corporation
800 Chrysler Drive CIMS 482-00-51
Auburn Hills, MI 48326-2757

Unless called as a witness by Respondent, Ms. Forest may be called as a witness by U.S.

EPA; if called as a witness by Respondent, Ms. Forest will be cross-examined by the Agency attorneys. In either situation, Ms. Forest will be examined regarding the operations at DaimlerChrysler's Toledo, Ohio facility, the violations at issue in the Complaint, and such other matters as Complainant deems relevant (as allowed by the Court). Given Ms. Forest's position with the Respondent corporation, Complainant requests the right to treat this witness as an adverse or hostile witness and to examine her through the use of leading questions should it become necessary for Complainant to call Ms. Forest as a witness in U.S. EPA's case-in-chief.

Documents and Other Exhibits

Complaint may offer the following documents/exhibits into evidence at the hearing².

Copies of the documents/exhibits are attached to this initial prehearing exchange.

1. Complainant's Exhibit C-1 - A copy of the Complaint filed on September 27, 2001.
2. Complainant's Exhibit C-2 - A copy of Respondent's Answer filed October 30, 2001.
3. Complainant's Exhibit C-3 - Report of April 5, 2001 RCRA Air Emissions Inspection for DaimlerChrysler's Toledo Assembly Plant 1.
4. Complainant's Exhibit C-4a - C-4f - Diagrams of Respondent's Toledo, Ohio Assembly Plant, Color #2 Spray Booth, given by Respondent to Duncan Campbell during the Inspection on April 5, 2001.
5. Complainant's Exhibit C-5 -Photographs 1 - 9; taken by Duncan Campbell, U.S. EPA, Region 5 of Respondent's Toledo, Ohio facility during Mr. Duncan's April 5, 2001 Inspection.
6. Complainant's Exhibit C-6 - July 29, 1997 letter from Elizabeth Cotsworth, Acting Director, Office of Solid Waste, U.S. EPA to Jill A. Weller, Thompson, Hine, & Flory P.L.L. regarding the applicability of EPA's regulations to indoor piping and flow equalization tanks used to convey solvents from spray painting booths to exterior accumulation tanks.

²The order in which the documents are numbered is not necessarily the order in which they would be introduced at hearing, and the use of the documents will not be limited by or to the summaries provided herein.

7. Complainant's Exhibit C-7 - July 30, 1999 Memorandum from Michael J. Mikulka, Environmental Engineer, U.S. EPA, Region 5 to Michele Aston, U.S. EPA, OAQPS and Jim Michael, U.S. EPA, OSWER regarding the "Applicability of Subpart BB to equipment at Ford Motor, Avon Lake, Ohio.
8. Complainant's Exhibit C-8 - June 2, 2000 Memorandum from Sonya Sasserville, Acting Chief, Permits Branch, Office of Solid Waste, U.S. EPA, to Joseph M. Boyle, Chief, Enforcement and Compliance Assurance Branch, Waste, Pesticides, and Toxics Division, U.S. EPA, Region 5 regarding the "Applicability of Subpart BB to Equipment at Ford Motor, Avon Lake, Ohio.
9. Complainant's Exhibit C-9 - March 28, 2001 letter from Robert Springer, Division Director, Waste, Pesticides and Toxics Division, U.S. EPA, Region 5 to Arthur R. Nash, Jr., Deputy Director, Michigan Department of Environmental Quality regarding the "Applicability of Subpart BB to Equipment Associated with Paint Booth Operations at Automobile Manufacturing Plants."
10. Complainant's Exhibit C-10 - August 16, 2001 memorandum from Elizabeth A. Cotsworth, Director, Office of Solid Waste, U.S. EPA and Eric V. Schaeffer, Director, Office of Regulatory Enforcement, U.S. EPA to Robert Springer, Director, Waste, Pesticides and Toxics Division, U.S. EPA, Region 5 regarding "Implementation of Certain RCRA Air Emission Standards."
11. Complainant's Exhibit C-11 - July 19, 2001 letter from W. Charles Moeser, Sr. Manager, Industrial Waste Compliance & Environmental Communications, Stationary Environmental & Energy, DaimlerChrysler Corporation to Mr. Thomas Skinner, Regional Administrator, U.S. EPA, Region 5.
12. Complainant's Exhibit C-12 - August 3, 2001 letter from Robert Springer, Director, Waste, Pesticides and Toxics Division, U.S. EPA, Region 5 to W. Charles Moeser, Sr. Manager, Industrial Waste Compliance & Environmental Communications, Stationary Environmental & Energy, DaimlerChrysler Corporation.
13. Complainant's Exhibit C-13 - August 31, 2001 letter from Eric V. Schaeffer, Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, U.S. EPA to Gary Weinreich, P.E., Manager Environmental Services, BMW Manufacturing Corp., W. Charles Moeser, Sr. Manager, Industrial Waste Compliance & Environmental Communications, Stationary Environmental & Energy, DaimlerChrysler Corporation and Julie C. Becker, Assistant General Counsel, Alliance of Automobile Manufacturers regarding the "Applicability of RCRA Requirements to Automobile Paint Spray Operations."
14. Complainant's Exhibit C-14 - Material Data Sheet for purge solvent used by Respondent at Toledo, Ohio facility.

15. Complainant's Exhibit C-15 - Uniform Waste Manifest from Michigan Department of Environmental Quality for paint waste and related material at Respondent's Toledo, Ohio facility, dated February 19, 2001.
16. Complainant's Exhibit C-16 - June 27, 1997 letter from September L. Arriaga, Vice President, Jones & Henry Laboratories, Inc. to Marilyn Bladel, Jeep Division of Chrysler Corp., with results of analysis of the maximum organic vapor pressure of purged solvent at Respondent's Toledo, Ohio facility. The letter attaches a June 20, 1997 Report prepared by DAT, Inc. for Jones & Henry Laboratories.
17. Complainant's Exhibit C-17 - A copy of relevant sections of Ohio's Hazardous Waste Rules.
18. Complainant's Exhibit C-18 - Section entitled "Tanks" available on U.S. EPA's OSW webpage.
19. Complainant's Exhibit C-19 - Light/Heavy - Liquid Determinations, Self-Instructional Problems, from U.S. EPA Workshop on Air Emissions from Waste Management Facilities.
20. Complainant's Exhibit C-20 - EPA's RCRA Civil Penalty Policy.

2. PENALTY

The Complaint did not contain a specific proposed penalty; rather it proposed that the Administrator assess a civil penalty up to the statutory maximum as provided in RCRA Section 3008, in accordance with EPA's RCRA Civil Penalty Policy. Pursuant to Section 22.19(4) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, "where the Complainant has not specified a proposed penalty, each party shall include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty." Complainant then is required to file a document specifying a proposed penalty with an explanation of how the penalty was calculated in accordance with any criteria set forth in the Act within 15 days of the date that Respondent files its prehearing exchange. Complainant has included in this initial prehearing exchange the factual information it considers relevant to the

assessment of a penalty. Complainant will file a document specifying a proposed penalty with an explanation of how the penalty was calculated in accordance with any criteria set forth in the Act within 15 days of the date that Respondent files its prehearing exchange.

3. PAPERWORK REDUCTION ACT

The provisions of the Paperwork Reduction Act (PRA), including Section 3512 of the PRA, do not apply to Counts 3, 4, and 6 of the Complaint, but may apply to Counts 1, 2, 5 and 7 of the Complaint. The OMB Control Numbers for the regulations at issue in these Counts are found at 40 CFR § 9.1. Complainant's investigation has found no instances where OMB approval lapsed for the Information Collection Requests under these regulations during the time period covered by the Complaint.

4. COMPLAINANT'S VIEW AS TO THE APPROPRIATE PLACE OF HEARING, AND AN ESTIMATE OF THE TIME NEEDED TO PRESENT ITS DIRECT CASE

Complainant believes that either Chicago, Illinois, or Toledo, Ohio, would be the appropriate location of the hearing. Complainant estimates that its case-in-chief will be presented within one full business day.

5. RESERVATION OF RIGHTS

Complainant respectfully reserves the right to file supplements to this initial prehearing exchange, including reply or rebuttal material, without motion, until 30 days before the scheduled date of the hearing. Complainant also respectfully reserves the right to file supplements to this initial prehearing exchange upon reasonable notice to Respondent and by order of this Honorable Court.

Complainant's Initial Prehearing Exchange for In the Matter of DaimlerChrysler

Corporation is hereby respectfully submitted.

Respectfully Submitted,

Karen L. Peaceman

Karen L. Peaceman
Associate Regional Counsel
United States EPA - ORC Region 5
77 W. Jackson Blvd., C-14J
Chicago, IL 60604
(312) 353-5751

CERTIFICATE OF SERVICE


I hereby certify that on this day I filed the original of the foregoing Initial Prehearing Exchange in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604, and that I then caused true and correct copies of the filed documents to be promptly mailed to the following by

First Class Mail:

William B. Moran
Administrative Law Judge
U.S. EPA (1900L)
Ariel Rios Building
1200 Pennsylvania Avenue
Washington, D.C. 20460

Steven C. Kohl
Howard & Howard
The Pinehurst Office Center, Suite 101
39400 Woodward Avenue
Bloomfield Hills, MI 48304

Dated: February 26, 2002


Deloris Johnson
Paralegal Specialist (C-14J)
United States Environmental
Protection Agency
77 W. Jackson Blvd.
Chicago, IL 60604
(312) 886-6806